
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ALBERT SMITH, III,

Movant,

versus

UNITED STATES OF AMERICA,

Respondent.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:19-CV-22
(1:03-CR-41)

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Movant, Albert Smith, III, a federal prisoner currently confined at FCI El Reno, proceeding *pro se*, filed this motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the motion to vacate, set aside, or correct sentence be denied for lack of jurisdiction as successive.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Movant filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b).

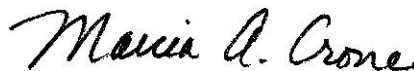
A review of the criminal docket in relation to this motion to vacate, set aside, or correct sentence reveals that movant has been granted the relief he requested. Movant filed the above-

referenced motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 on January 14, 2019, requesting he be resentenced in light of the First Step Act of 2018 (docket entry no. 1). On January 23, 2019, the Magistrate Judge entered a Report and Recommendation recommending the motion to vacate, set aside, or correct sentence be denied for lack of jurisdiction as successive (docket entry no. 3). Movant filed Objections to the Report and Recommendation on February 11, 2019 (docket entry no. 5). On March 25, 2019, however, movant filed a *Pro Se* Motion to Appoint Counsel in his criminal case (docket entry no. 211). The motion was granted on May 8, 2019 (docket entry no. 212) and movant filed an Unopposed Motion to Reduce Sentence on June 11, 2019 pursuant to the First Step Act (docket entry no. 213). On June 20, 2019, this Court granted the Motion to Reduce Sentence and reduced movant's sentence to a term of 211 months imprisonment and 4 years supervised release. This motion to vacate, set aside, or correct sentence is now moot.

ORDER

Accordingly, the objections of the plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

SIGNED at Beaumont, Texas, this 28th day of August, 2019.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE